United States Department of Labor
Employees' Compensation Appeals Board

M.O., Appellant	)	
and	)	**Docket No. 15-850**
	)	**Issued: June 18, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Plano, TX, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 10, 2015 appellant filed a timely appeal from a January 21, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish a back injury in the performance of duty.

FACTUAL HISTORY

On August 5, 2014 appellant, then a 50-year-old sales and service associate, filed a claim for traumatic injury (Form CA-1) asserting that he sustained a low back strain on July 8, 2014 while scanning and throwing parcels. His supervisor controverted the claim as appellant did not

[1] 5 U.S.C. §§ 8101-8193.

identify an injury. A second supervisor confirmed that appellant reported back pain on July 8, 2014 and that he advised appellant to seek medical care. The supervisor contended that appellant did not mention an occupational injury.

In a July 8, 2014 work slip, Dr. G. Emory Warren, an attending physician specializing in occupational medicine, diagnosed a lumbar strain and noted work restrictions.

On August 26, 2014 OWCP advised appellant of the additional evidence needed to establish his claim, including a detailed description of the work factors that caused or contributed to the claimed condition, and a report from his attending physician explaining how and why those tasks caused the claimed low back strain. It afforded appellant 30 days to submit such evidence.

Dr. Warren provided a history of injury in a July 11, 2014 report. He related appellant's account of a July 8, 2014 onset of lumbar pain, worse on the left, while "lifting parcels constant bending and lifting." Dr. Warren diagnosed a lumbar strain and lumbar pain. He noted work restrictions, prescribed medication, and ordered physical therapy. Dr. Warren submitted July 15 and 24, 2014 follow-up reports, noting appellant's symptoms improved with physical therapy. He diagnosed a lumbar strain, lumbar pain, and sacroiliac pain. Dr. Warren restricted appellant to modified duty.[2]

By decision dated October 7, 2014, OWCP denied appellant's claim as fact of injury was not established. It found that appellant did not establish that the work incidents of July 8, 2014 occurred as alleged.

In an October 18, 2014 letter, appellant requested reconsideration. He reiterated that he injured his back on July 8, 2014 while scanning and sorting parcels. Appellant asserted that he "reported that injury to [his] immediate supervisor and they advised [him] to go see a doctor." He provided a copy of Dr. Warren's July 11, 2014 report, updated with Dr. Warren's September 2, 2014 electronic signature. Appellant also submitted duplicate copies of reports previously of record.

By decision dated January 21, 2015, OWCP modified its prior decision to accept that the identified work factors of sorting and throwing parcels occurred at the time, place, and in the manner alleged. It denied the claim, however, as causal relationship was not established. OWCP found that the medical record did not explain how and why the accepted work factors would cause the diagnosed lumbar strain.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any

[2] Appellant also provided physical therapy notes dated July 14, 15, 17, 21, 24, and 28, 2014. He also provided employing establishment documents regarding leave buy back and health care benefits.

disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.[5] An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[6] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[7]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[8]

ANALYSIS

Appellant claimed that he sustained a traumatic lumbar injury on July 8, 2014 while throwing and sorting parcels. The employing establishment initially controverted the claim and OWCP denied the claim based on a lack of evidence corroborating appellant's work activities on July 8, 2014. On reconsideration, OWCP accepted that the identified work factors occurred at the time, place, and in the manner alleged. However, it denied the claim because the medical evidence was insufficient to establish causal relationship.

In support of his claim, appellant submitted reports dated from July 8 to 24, 2014 by Dr. Warren, an attending physician specializing in occupational medicine. Dr. Warren repeated appellant's history of the onset of low back pain on July 8, 2014 while throwing and sorting parcels at work. He diagnosed a lumbar strain, lumbar pain, and sacroiliac pain. In his reports,

[3] *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[5] *Gary J. Watling*, 52 ECAB 278 (2001).

[6] *S.N.*, Docket No. 12-1222 (issued August 23, 2013); *Tia L. Love*, 40 ECAB 586, 590 (1989).

[7] *Deborah L. Beatty*, 54 ECAB 340 (2003).

[8] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

Dr. Warren did not explain how or why throwing and sorting parcels would cause the claimed lumbar injury.

OWCP advised appellant by letter of August 26, 2014 the necessity of submitting a statement from his attending physician explaining the medical reasoning supporting a causal relationship between the accepted work factors and the claimed lumbar injury. Appellant did not submit the evidence requested and OWCP's January 21, 2015 decision was correct.

On appeal appellant asserts that he reported the claimed injury to his supervisor immediately after it happened. The prompt report of the claimed injury is indisputable. A supervisory statement acknowledged that appellant reported back pain on July 8, 2014. Appellant also asserted that OWCP paid for all treatment and medication connected with the claimed injury. The Board notes, however, that OWCP payments are not an acceptance of a condition as work related.[9]

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established a lumbar injury in the performance of duty.

[9] *S.P.*, Docket No. 15-225 (issued April 1, 2015); *M.C.*, Docket No. 12-64 (issued May 10, 2012); *Gary L. Whitmore*, 43 ECAB 441 (1993).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 21, 2015 is affirmed.

Issued: June 18, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board